
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

SAMUEL MARTINEZ,

Plaintiff,

versus

GABRIEL MARTINEZ,

Defendant.

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CIVIL ACTION NO. 9:23-CV-112

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Samuel Martinez, a prisoner confined at the Polunsky Unit of the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Gabriel Martinez. The defendant is employed as a correctional officer at the Polunsky Unit.

The court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends dismissing the action without prejudice pursuant to 28 U.S.C. § 1915(g).

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes

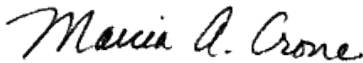
the objections are without merit. Because he has accumulated three “strikes,” Plaintiff is barred from proceeding *in forma pauperis* unless he is in imminent danger of serious physical injury at the time the action is filed. Plaintiff’s allegations that the defendant assaulted him by closing the food slot door on Plaintiff’s arm and then denying him medical treatment on May 23, 2023, are insufficient to demonstrate that he was in imminent danger when he filed this action nearly two months later. Further, Plaintiff has not paid the \$402.00 filing fee. Accordingly, this action will be dismissed.

ORDER

Accordingly, Plaintiff’s objections (#6) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (#3) is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge’s recommendation.

Signed this date

Aug 25, 2023



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE